small plots are always kept undemarcated with stones. That is the practice in British India also. I may say ours is the best survey, not even excepting British India. We have already incurred a huge expenditure in the matter of the Survey. I really think there is no necessity to survey these small bits of lands less than 33 feet broad with stones and incur this huge expenditure-part of which will be payable by the Ryots. The implications are very large. And the Government are constrained to oppose the resolution.

There are however certain kinds of Porambokes, the demarcation of which is under the consideration of the Government. The Trichur Shoranur Road has been widened. This requiries demarcation. Even that requiries a huge expenditure. Panchayat roads have been widened and these roads have not been demarcated. I think that work has to be taken by the Government. From this the Hon'ble Member should not understand that if any particular person is prepared to pay the cost of stones we are not prepared to plant them.

Mr. T. A. Ramachandra Ayyar *(Nellayi).*—Only half.

Mr. K. Achyuta Menon *(Diwan Peishkar).*—If the rules require to pay only half he need pay only half.

മിസ്റ്റർ ടി. എ. രാമചന്ദ്രയ്യർ *(Nellayi).*— കൂടിയാനവന്നം ഗവർമ്മെണ്ടിന്നം ഒരുപോലെയുള്ള ബുദ്ധിമുട്ടാണെ ഞാൻ മൂണ്ടിക്കാണിച്ചിരു്. കൂടിയാന്മാരുടെ പേരിൽ അവരെ ഒഴിപ്പിക്കുന്നതിന്നുള്ള വ്യവഹാരവും മറും കൊടുക്കുവാനാണ് ഗവർമ്മെണ്ടിന്ന ഇഷ്ടമെങ്കിൽ എനിക്കു യാതൊരു വിരോധവുമില്ല. കൂടിയാനവന്റെ കഷ്ടപ്പാടിനെ മൂണ്ടിക്കാണിക്കേണ്ട ചുമതല എനിക്കുണ്ട്. അതു ഞാൻ ചെയ്തു. ഇതു പിൻവലിക്കുവാൻ ഞാൻ അനുവാദം ചോദിച്ചുകൊള്ളുന്നു.

Resolution was, by leave, withdrawn.

8. Abrogation of the Law empowering arrest of debtors.

Mr. A. Eachara Menon *(Chittur Rural).*—Sir, the resolution standing in my name is this:—"*This Council recommends to the Government that the Law empowering the arrest and detention in Jail of debtors be abrogated*". It is purely a humanitarian measure. It is to protect the honest debtors from detention in the Civil Jail. After I sent this resolution to the Council the Government of India have amended this

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rule of course with certain reservations. Very recently the Mysore Government has also done that. Some sort of protection is given by the Travancore Government also. I do not know why our Government is not doing anything in this direction. I do not want to give protection to recalcitrant and fradulent debtors. The Government will not be able to realise the difficulty of having this section. Our election is fast approaching. There may be people who are debtors to whom His Highness has given franchise. This section may be availed of by unscrupulous persons to make them vote for the persons they like. To avoid all these I have tabled this motion, and I commend this resolution to the acceptance of this House.

Mr. K. S. Panicker (*Ezhuvas North*).—I second it.

Mr. K. M. Ibrahim (*Cranganur*).—With the kind permission of the Honourable President I would just like to get one piece of information from the Government. May I know whether they are aware of any other Government that have completely abolished this system of detaining prisoners in the Civil Jail for realising debts? I believe there are a large number of Government systems. They have considered this system to be a barbarous system. And they have abolished this system completely.

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—I have heard of some foreign Government who attempted it. With what results we have to investigate.

Mr. V. K. Krishnankutty (*Anthikad*).— Sir, the present resolution seeks to make a very serious in-road into the rights of the creditor class or the decree-holders. The Hon'ble Member who moved the resolution referred to a particular amendment which has come into force in British India in 1937. That also does not go to the extent of saying that judgment-debtors should not be arrested at all. There what the legislature did was to shift the burden of proof from the judgment-debtor to the decree-holder. The decree-holder is bound to issue a notice before getting an arrest warrant to show cause why the judgment-debtor should not be arrested. In the first instance the judgment-debtor will not be arrested simply on an execution petition. When the judgment-debtor appears and shows cause before the court that he has not defrauded the decree-holder, that he has not sold away properties to defraud the creditors, then he will be let free. The burden of proving that the judgment-debtor has acted fraudulently is on the creditor. That is

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all what has been done in British India and if the intention of the Hon'ble Mover is to introduce that change in our land, then this is not the proper procedure. He could have brought an amendment to the Civil Procedure Code. To the extent to which this resolution goes I fear we cannot go. We can adopt the British system and amend the Civil Procedure Code accordingly. No doubt, there is the argument raised by the Hon'ble Member for Cranganur that arrest for nonpayment of debts is a relic of barbarism. But there are many relics of barbarism even now prevailing in other matters. As I first said we will adopt the British system and shift the burden of proof from the judgment-debtor to the decree-holder. To that extent I am supporting the resolution.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, the Government are not able to do anything but to oppose this resolution. Even the Hon'ble Mover himself thinks that he has gone far in drafting the resolution in the manner in which it is drafted. It is an unconditional and unqualified statement. He says "that the law empowering the arrest and detention in jail of debtors be abrogated". I do not think it will be fair to argue and I do not think the Hon'ble Member for Chittur argues that all debtors however roguish or mala fide they may be should get the benefit of this resolution. I suppose that what the Hon'ble Member wants is that honest debtors should not be sent to jail.

Mr. K. Ayyappan *(Ezhuvas South).*— Are you prepared to follow the British rule?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—If it is a question of safeguarding the interests of honest debtors the Hon'ble Member may be informed that even in the Civil Procedure Code as it exists there is abundant power conferred upon courts of law.

Mr. A. Eachara Menon *(Chittur Rural).*—But there are judges and judges.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— There are debtors, good, bad or indifferent, who hide their money when the creditor comes and asks for money. The provision contained in Order 21, Rules 35 to 38 of the Civil Procedure Code gives ample powers to the courts. Now, rule 38 lays down that "Where a judgment-debtor appears before the Court in obedience to a notice issued under rule 35, or is brought

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before the Court after being arrested in execution of a decree for the payment of money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount if payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be". But there are some inconvenient conditions in it. That is the trouble. But inconvenient only to that particular class of debtors to whom reference was made. Then clause 2 runs as follows:—"Before making an order under sub-rule (1) the Court may take into consideration any allegation of the decree-holder touching any of the following matters, viz., (a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account." Suppose he has taken his ward's money. Then the courts will consider that. Clause (b) says "the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree." Clause (c) says "any undue preference given by the judgment-debtor to any of his other creditors", and so on. These are the considerations which the courts have to go into in deciding whether a particular judgment-debtor who is arrested and brought before it or for whose arrest the application is made, should be released. I am sure the Hon'ble Members including the Hon'ble Member for Chittur will agree that these are very fair conditions.

Mr. A. Eachara Menon *(Chittur Rural).*— Were not these conditions in the British Act?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes.

When the Hon'ble Member has brought a Bill to bring this law into conformity with the British Indian Law I will answer it. For the information of the Hon'ble Member I may also say that a Bill intended to bring the Cochin Law into line with the British Indian Law is actually pending before this House. I think the Bill was sponsored by the Hon'ble Member for Cranganur. We will go into a discussion about the merits of that Bill then. . . . . .

Mr. A. Eachara Menon *(Chittur Rural).*—I beg to withdraw the resolution.

Resolution was by leave withdrawn.

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